Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

First Appeal No. 64 of 2005

Smt. Runima Sah W/o Ved Prakash Sah,
C/o Sudheer Sah, R/o C.M.E.,
Bungalow No. 8, Ashok Avenue, Chitranjan,
District Vardhman, West Bengal.

... Appellant/Opp. party

Versus

Ved Prakash Sah S/o Bhanu Prakash Sah,
R/o 20, Ramsay Road, Tallital, Nainital,
Uttaranchal.

.... Respondent/applicant

Ms. Tehmina Punvani, Sr. Advocate assisted by Sri Naresh Pant, Sri Anurag Bisaria and Ms. Menka Tripathi learned counsel for the appellant.
Ms. Seema Sirohi, learned counsel for the respondent.

Hon'ble P.C. Verma, J.
Hon'ble J.C.S. Rawat, J.

(Delivered by Hon'ble P.C. Verma, J.)

The appeal came up for hearing on 16.12.2005. The following order was passed:-

> "We started the reconciliation proceedings between the parties. But the father of the appellant cried in a contemptuous manner before this Court and due to which the reconciliation proceedings were disturbed. Therefore, the reconciliation is not possible. We stopped the reconciliation proceedings and heard the matter on merit."

On the same day i.e. 16.12.2005 we dismissed the appeal for the reasons to follow later on.

2. Now we proceed to record our reasons. The appeal has been filed by the Opp.party/appellant against the judgment and order dated 02.05.2005 passed by the Judge, Family Court, Nainital in Civil Suit No.92 of 1999, Ved Prakash versus Runima Sah, whereby the learned Judge, Family Court allowed the application filed by the applicant (husband) under Section 13(1A) of the Hindu Marriage Act for dissolution of marriage.

3. Brief facts of the case giving rise to this appeal are that the respondent (applicant) filed the petition against the appellant (Opp.party) under Sec. 13 of the Hindu Marriage Act, 1955 for dissolution of marriage on the ground of cruelty. The marriage was solemnized between the parties on 21.11.1996 according to Hindu rites in Hotel Pavilion, Mallital, Nainital. After the marriage the parties were lived together at House No. 20, Ramsay Road, Tallital, Nainital but they have cohabitated only once. No issue was born to the parties by the said wedlock. It was alleged by the respondent that after the marriage was solemnized, the appellant allowed the petitioner to have cohabitated with her only once and thereafter she refused him to have sexual intercourse with her. The appellant used to consume liquor publicly at public places and after returning home she indulges in hurling abuses to the respondent and also used to make unseemly behavior with him. At times she became violent, hit the petitioner and threatened to kill him. The appellant was extremely spendthrift. She used to go to market and used to spend without measure in the name of respondent, subjecting him to heavy debt. After solemnization of their marriage, the appellant has been leaving the company of the respondent for long intervals.

Since February 1999, she left the company of the respondent without his knowledge and consent and did not return to her matrimonial home despite several efforts done by him. The appellant has treated the respondent with utmost cruelty. Again she has made a telephonic call demanding Rs. 25,000/-, failing which she has threatened the respondent of dire consequences. Earlier also a similar demand of the appellant had to be satisfied by sending Rs. 10,000/-.

4. The Opp.party/appellant contested the case and filed her written statement denying all the allegations made by the applicant/respondent. However, she did not dispute the marriage between them on 21.11.1996. The appellant further alleged that she and the respondent both enjoyed the blissful life of marriage and had sexual intercourse on various occasions. She also alleged that all the allegations were levelled against her by the respondent with ulterior motive. She specifically denied that she has been exposed to liquor.

5. The parties adduced oral as well as documentary evidence in support of their case. The learned Judge, Family Court after appreciating the evidence of the parties came to the conclusion that there was cruelty on the part of the appellant (wife) and passed the decree of divorce between parties. Feeling aggrieved, the appellant/Opp. party has come up in this appeal.

6. We have heard the learned counsel for the parties and perused the entire record of the case.

7. It is pertinent to mention here that the petition has been filed on the ground of desertion and cruelty. The trial court has held that the petition is not

maintainable for the divorce on the ground of the desertion. The learned Judge, Family Court has held that the applicant has alleged in his petition that his wife deserted him in the month of February 1999 and the said suit was filed on 26th October, 1999 and two years of the desertion provided u/s 13 (1) (1 kha) has not been completed. As such, the applicant (respondent herein) cannot claim divorce on that ground. Before the trial court the applicant has alleged in his plaint that the Opp.party/appellant used to take liquor and after taking the liquor she used to threat the husband cruelly. It was further alleged that the Hindu ladies do not take liquor. The respondent got him examined as PW1 in support of his contention and Sri Jagdish Singh as PW2 who happens to be the official of his hotel. P.W.2 has also stated that very often she used to take liquor while she used to go to the market. His evidence was assailed on the ground that he is the interested witness and employ of the hotel of applicant. In the examination-in-chief as D.W. 1 the Opp.party/appellant has not stated that she did not take liquor in the public places and she never took the liquor. In her cross-examination, she has admitted that sometimes she used to take liquor so that she could not recollect her mother in her mind. She has also admitted that in the Hindu families the ladies did not take liquor. This admission by D.W.1 clearly fortifies the allegations made by the applicant/respondent. The second ground of the cruelty was alleged in the plaint that the Opp.party/appellant cohabited with the applicant/respondent only once during her matrimonial stay in his house. However, the Opp.party/appellant denied this assertion in her written statement. During

the course of cross-examination when a suggestion was put to the Opp.party/appellant that she wants to reside with her mother she did not deny, rather she replied in affirmative. A question was also put to the appellant in cross-examination to the effect whether she intends to go to the house of her husband, she specifically replied in negative. D.W.1 (appellant) had stated in her cross-examination that,

> **eS dHkh dHkh liquor ;w fy;k djrh Fkh rkfd eSa>wB eEeh dh ;kn u vk;sA eSjh bPNk viuh ifr dh lkFk lgokl dju dh ugh gkrh FkhA**

8. This statement clearly reveals that the allegation made against the appellant by the respondent is proved. If one of the spouses took the liquor, it definitely comes within the definition of the cruelty. The admission as indicated above clearly reveals that the respondent was subjected to the cruelty. We are completely in agreement with regard to the finding recorded by the trial court. The appellant has not challenged the propriety of the finding recorded by the trial court.

9. The only point contended by the learned counsel for the appellant before us was that the Family Court never made any effort to reconcile the matter with the appellant. It was further pointed out that under Section 9 of the Family Courts Act as well as Clause (2) of Section 23 of the Hindu Marriage Act, 1955 and under the provisions of Order 32-A Rule 3 of Civil Procedure Code a duty has been cast upon to the court in the first instance, in every case where it is possible to do so consistently with the nature and circumstance of the

case, to assist and persuade the parties in arriving at a settlement in respect of the subject matter of the suit or proceedings. Learned counsel for the respondent refuted the contention and contended that the trial court had made the effort for the reconciliation. The perusal of the order-sheet reveals that the trial court on 20th May, 2000 tried to reconcile the matter. The order of the trial court is as under:

> ** okn i|dkjk x;kA nksuksa i{k mifLFkr gSA odhy foi{kh dk udy nkok ikIr djkbZ xbZA foi{kh ls reconciliation gsrq okrk dh xbZA fnukd 13-06-2000 fu;r fd;k tkrk gSA**

10. The order of the trial court clearly reveals that the reconciliation proceedings were conducted and thereafter it was fixed on 13.06.2000. Thereafter on 10.11.2003, the reconciliation proceedings were held but it cannot be completed. Thereafter, the joint application for the adjournment was moved and ultimately, the court directed the parties to produce their respective evidence. Perusal of the record reveals that the court has tried to reconcile the matter but it can be inferred that the reconciliation was not successful in this case. It is also pertinent to mention here that the parties were directed to appear before this Court in person on 05.12.2005. The parties appeared in person before this Court and the Bench tried to reconcile the matter. When the reconciliation proceedings were going on, the appellant did not respond the offers of the other party as well as the Court. At the time of appearance of the parties before this Court, it was found that the appellant was sometimes immersed in herself. While the proceedings

were going on, the father of the appellant interrupted the proceedings and the Bench directed him not to interfere. Therefore, the reconciliation could not be successful and the Bench thereafter proceeded to hear the case.

11. Perusal of Section 9 of the Family Courts Act reveals that the word has been used "Family Courts in the first instance where it is possible to do so consistent with the nature and circumstance of the case, to assist and persuade the parties in arriving at a settlement." A similar provision has been provided in Clause (2) of Section 23 of the Hindu Marriage Act, 1955 and the same provision has been provided under Order 32 –A Rule 3 of the C.P.C.. In the instant case, the effort has been made by the trial court but could not come to any conclusion. Apart this, it is to be considered as to whether the effort for settlement is must even in a case where it is not possible consistently with the nature and circumstances of the case and the parties. The above quoted phrase centrally indicates the Legislative intent that court has to consider the nature of the dispute involved and thereafter to take a decision whether to make an endeavor for the settlement. If during the trial the courts find that there is scope for the settlement it can act in terms of the above provisions of the enactment and thereafter there is no positive statutory mandate that notwithstanding nature of the dispute involved a settlement has to be admitted.

12. In view of the above fact, we are of the view that the parties were not in a position to reconcile the matter. Therefore, the contention made by the learned counsel for the appellant has no force.

13. No other point was raised except above. Before parting this appeal we tried to re-appreciate the evidence so justice may be done to the parties. Even though no argument was advanced with regard to the other findings of the fact recorded by the trial court.

14. There is no error in the finding of the trial court. Thus, we are in complete agreement with the findings recorded by the trial court.

15. Since we have already pronounced the operative portion of the order dismissing the appeal on 16.12.2005, we have now given the reasons for the order pronounced. The order impugned is affirmed. No order as to costs.

(J.C.S. Rawat, J.) **(P.C. Verma,J.)**

Dated: April 4, 2006
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